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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,433	11/13/2003	Wilbur H. Crawley	9501-73786	9641
23643	7590	11/16/2004	EXAMINER	
BARNES & THORNBURG 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204			TRAN, BINH Q	
			ART UNIT	PAPER NUMBER
			3748	

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/713,433	CRAWLEY ET AL.	
	Examiner	Art Unit	
	BINH Q. TRAN	3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-29,31-33,35-39 and 41-43 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 21-29,31-33,35-39,41-43 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/12/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

Claims 21-29, 31-33, 35-39, and 41-43 are rejected under the judicially created doctrine of double patenting over claims 1-20 of U. S. Patent No. 6,694,727 B1 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: the application claims are merely broader than the patent claims.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321§ may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 37-39 are rejected under 35 U.S.C. 102 (b) as being anticipated by Brighton (Patent Number 4,651,524).

Regarding claim 37, Brighton discloses an exhaust processor (e.g. 14, 204) comprising: a soot filter (e.g. 110) operable to filter exhaust gas, a temperature sensor (e.g. 125, 126, 127) operable to sense an outlet temperature of the soot filter, a flow rate changer (e.g. 18, 20, 24, 26) operable to change the flow rate of heated fluid flowing to the soot filter, a temperature changer (e.g. 10, 28, 32) operable to change the temperature of the heated fluid, and a controller operable to operate the flow rate changer and the temperature changer to cause a change in at least one of the flow rate and temperature of the heated fluid in response to the outlet temperature sensed by the temperature sensor to maintain the outlet temperature at a regeneration temperature during

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regeneration of the soot filter (e.g. See Figs. 1-10; col. 9, lines 30-67; cols. 10-11, lines 1-67; col. 12, lines 1-35).

Regarding claim 38, Brighton discloses comprising an air supply (e.g. 24), wherein the flow rate changer includes a valve positioned to change the flow rate of a flow of air from the air supply, the temperature changer includes an electric heater positioned to change the temperature of the flow of air from the air supply, and the controller is configured to control operation of the valve and the electric heater in response to the outlet temperature sensed by the temperature sensor (e.g. See Figs. 1-10; col. 9, lines 30-67; cols. 10-11, lines 1-67; col. 12, lines 1-35).

Regarding claim 39, Brighton discloses comprising a burner, an air supply (e.g. 24), and a fuel supply (e.g. 22), the flow rate changer includes an air valve configured to control a flow of air from the air supply to the burner (e.g. 52), the temperature changer includes a fuel valve configured to control a flow of fuel from the fuel supply to the burner, the burner is configured to combust a mixture of air received from the air supply via the air valve and fuel received from the fuel supply via the fuel valve to provide the heated fluid, and the controller is configured to control operation of the air valve and the fuel valve in response to the outlet temperature sensed by the temperature sensor (e.g. See Figs. 1-10; col. 6, lines 61-67; col. 7, lines 1-67; col. 8, lines 1-9).

Claims 37-38 are rejected under 35 U.S.C. 102 (b) as being anticipated by Wagner et al. (Wagner) (Patent Number 4,851,015).

Regarding claim 37, Wagner discloses an exhaust processor (e.g. 28, 35, 56, 56a) comprising: a soot filter (e.g. 90, 104) operable to filter exhaust gas, a temperature sensor (e.g. 96) operable to sense an outlet temperature of the soot filter, a flow rate changer (e.g. 26, 29, 33)

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operable to change the flow rate of heated fluid flowing to the soot filter, a temperature changer (e.g. 92, 92', 92b, 92c) operable to change the temperature of the heated fluid, and a controller (e.g. 164) operable to operate the flow rate changer and the temperature changer to cause a change in at least one of the flow rate and temperature of the heated fluid in response to the outlet temperature sensed by the temperature sensor to maintain the outlet temperature at a regeneration temperature during regeneration of the soot filter (e.g. See Figs. 1-13; col. 6, lines 20-43; col. 10, lines 35-67; cols. 11-12, lines 1-67).

Regarding claim 38, Wagner discloses comprising an air supply (e.g. 282), wherein the flow rate changer includes a valve positioned to change the flow rate of a flow of air from the air supply, the temperature changer includes an electric heater positioned to change the temperature of the flow of air from the air supply, and the controller is configured to control operation of the valve and the electric heater in response to the outlet temperature sensed by the temperature sensor (e.g. See Figs. 12-13; col. 13, lines 7-67; col. 14, lines 1-5).

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of six patents:

Kusuda et al. (Patent Number 4840028), Lopez Crevillen et al. (Patent Number 5063737), Bailey (Patent Number 5065574), Rao et al. (Patent Number 4544388), Rim et al. (Patent Number 5085049), and Kume et al. (Patent Number 4589254) all disclose exhaust gas purification for use with an internal combustion engine.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Binh Tran whose telephone number is (703) 305-0245. The examiner can normally be reached on Monday-Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion, can be reach on (703) 308-2623. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.



BT
November 12, 2003

Binh Q. Tran
Patent Examiner
Art Unit 3748